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Supreme Court, U.S.
FILED

08-798 NOV 10 2008

OFFICE OF THE CLERK
William K. Suter, Clerk

No. _____

In The
SUPREME COURT OF THE UNITED STATES

IN RE RICHARD JOHN FLORANCE, JR.,
Applicant – Applicant – Petitioner.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS
OF TEXAS

ORIGINAL PETITION FOR A WRIT OF CERTIORARI

RICHARD JOHN FLORANCE, JR.
1908 VASSAR DRIVE
RICHARDSON, TEXAS. 75081

Questions Presented

Pre-trial habeas

1. Is this proceeding moot?

2. Is pre-trial habeas a mere motion that may be commingled into the underlying criminal case?

3. Is a "restrainor" trial court ***disqualified*** from presiding over the habeas proceeding?

Parties

Applicant, Petitioner

RICHARD JOHN FLORANCE, JR., "restrained" defendant ("RJF")

Respondents

County Court At Law No. 2 (transferor trial court)

JOHN O. BARRY, "judge," "restrainor"
County Court At Law No. 3 (transferee trial court)

STATE OF TEXAS

Hon. GREG ABBOTT
Attorney General

JOHN R. ROACH
Collin County DA

Petition for a Writ of Certiorari

RJF petitions for a writ of certiorari to the Court of Criminal Appeals of Texas ("CCA") as follows:

Citations to decisions below

None

Jurisdiction

(i) Date Order Was Entered
Motion for Leave denied 15 October 2008. [+90: 13 Jan 2009]

(ii) Extensions N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. § 1257(a) (final).

(v) Regarding notice of statutory challenge, Rule 29.4(c)
Underlying habeas application contains statutory challenge(s). STATE is a party. All activity in state courts.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

When Federal Questions Were Raised

When the county court commandeered the habeas and commingled it with the underlying case.

BARRY ordered the clerk to file RJF's habeas application in the underlying "criminal" case.

Procedural facts.

In the underlying case, State has persecuted RJF via Texas Penal Code § 32.49 (Class A misdemeanor), which criminalizes the exercise of the right of redress. By filing his "Notice of Lien", RJF asserted his commercial claim arising from criminal Record-tampering committed by the former Collin County Clerk, TAYLOR, via her employees. *See* No. 06-777. Despite DAVIS/TAYLOR's threats of criminal charges, RJF refused to release his claim, which refusal led to the underlying extortionate, retaliatory, witch-hunt, etc., "criminal" case. No. 07-171 addresses the related *civil* case.

2008 June 5 (Thurs.). RJF overnighted his habeas application to the county court.

June 9 (Mon.). File-stamp on application.

June 24. BARRY documented his having "commandeered" the habeas.

July 1. RJF's verified emergency collateral order doctrine Notice of Appeal (***disqualification***).

July 7. Hearing on habeas (and motion to dismiss). Both denied. RJF supplied a written order. BARRY locked up the Record in his office.

July 14. New application filed with CCA.

July 16-17. Two-day trial ended when six-member administrative advisory panel convicted RJF based, in part, on TAYLOR's legal conclusion, "I just don't owe it." [1] The conviction and sentence (6-months jail, $2,000 fine) are both on appeal. [2]

July 23. Motion to Supplement, in CCA *and* state appellate court, to add the 7 July order never served

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[1] The mere *existence* of RJF's claim *is* the "crime".

[2] Florance v. State, No. 05-08-00984 (Tex. App. – Dallas) (Transcript still in process).

on RJF and rendered unavailable even to the clerks.

RJF's Removal case, *see* No. 07-1179, motion to dismiss, and pre-trial habeas all say the same thing: jurisdiction doesn't exist. The transferor court dismissed the case. He was reversed, and he self-recused. BARRY has "seen" no defendant other than ✱ **Republic of Texas** ✱, who- or what-ever that is.

BARRY's handling of this habeas is conscience-shocking. RJF styled the application as the separate CIVIL proceeding that it is. Nonetheless, BARRY ordered the clerk to commingle the habeas with the underlying criminal case. Then, treating the application as a mere pre-trial motion, BARRY buried it and ignored it, as he was also actively doing with RJF's motion to dismiss.

After RJF exposed these outrageous shenanigans by raising the "hue and cry" via his collateral order doctrine appeals, BARRY somehow managed to put the habeas and the motion to dismiss on his hearing docket. Upon hearing, BARRY made his ruling in open court: both the habeas and the motion to dismiss were denied. Upon BARRY's suggestion, RJF went to a great deal of trouble to submit a proposed order "immediately" after that hearing, but, as is clear in hindsight, BARRY neither wanted nor needed that proposed order. Moreover, the fill-in court reporter was too swamped to get that Transcript out, and BARRY locked up the Record in his office until the trial started. Even the clerks had no access to it. BARRY never served his written order on RJF, and RJF had no access to the Record until after the trial.

Having no written order or Transcript, RJF filed

his pre-trial habeas application and motion with the CCA, anyway. RJF moved to supplement the Record in both the CCA and the appellate court once he was able to obtain a copy of the order. The appellate court denied that motion but ordered the entire Record be produced promptly for purposes of the matters relevant to the underlying case. [3]

The related state appeal.

In addition to the new application filed with the CCA, RJF also appealed BARRY's denial, [4] which appeal is not the norm under the current procedure.

For a recent discussion of the current procedure in a misdemeanor case, *see, e.g.*, *Ex Parte Villanueva*, __ S.W.3d __ (Tex. Crim. App. 2008) [PD-1836-06, 30 Apr.]. In short, it's this: (1) File application with the presiding trial court. (2) If the application is *denied* (merits not reached), then file a new application with the CCA. (3) If the application is *granted* and release is denied on the merits, then appeal in the normal course.

Thus, looking at (2), the condition precedent for filing a new application with the CCA is the entry of a *lawful* order by the trial court denying the application. Even TEX. CRIM. PROC. CODE art. 11 ("Art. __") overtly recognizes a magistrate as a party to the habeas proceeding. Art. 11.47 (regarding an informal or void warrant) (attendance enforceable via arrest). So, where the trial court is ***disqualified***, the ruling is facially void, and there's a fundamental

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[3] This appellate court has made a habit of ruling on collateral order doctrine appeals without first having a Record. *See* Florance v. State, Nos. 05-08-00724-CR and -01301-CR.

[4] Ex Parte Florance, No. 05-08-00994-CR (dismissed 20 Oct.; PDR mailed 24 Oct.).

question as to whether the CCA has jurisdiction to ***grant*** any motion for leave. Since RJF sees no *lawful* order, thus a lack of jurisdiction in the CCA to ***grant*** the motion, he also appealed BARRY's denial.

Argument

Pre-trial habeas

1. Is this proceeding moot?

There *is* a final judgment.

However, BARRY "commandeered" the application, commingled it with the underlying criminal case, intentionally delayed even addressing the application, never served the ruling, which delayed review, and secreted the Record, rendering it completely inaccessible for that last 9-10 days before trial. Given the "convicting court" policy, *see* Arts. 11.07, 11.071, all of these fully reproducible acts are likely to be repeated against RJF and *will* evade review if not addressed in the habeas context. *See, e.g., Spencer v. Kemna*, 523 U.S. 1, 17-18 (1998).

2. Is pre-trial habeas a mere motion that may be commingled into the underlying criminal case?

Habeas is a collateral, *cf. Boumediene v. Bush*, __ U.S. __ (12 June 2008), CIVIL, *see, e.g., O'Neal v. McAninch*, 513 U.S. 432 (1995), proceeding. Therefore, it should be treated as a separate CIVIL suit, given a CIVIL case number, and assigned to a non-***disqualified*** CIVIL court judge.

The "restrainor" judge has the convenience of

having the pre-trial Record. The Record would have to be reproduced for the CIVIL court's *simultaneous* use. Better, however, especially where it's a pre-trial application, is that the Record is "transferred" ("certified") to the civil court sitting in review via habeas, and the criminal proceeding is stayed pending resolution of those jurisdictional issues. Where it's a post-judgment matter, "transfer" ("certiorari") is not even a *momentary* aberration in the process. Thus, there need be only one Record.

This may invite a piece-meal appeal problem. But, habeas is already a separate process, and the range of pre-trial habeas issues is necessarily self-limiting. Here, it's statutory voidness. Key, what trial court in his right mind wants to find out after it's too late that he exercised jurisdiction he never had?

3. Is a "restrainor" trial court *disqualified* from presiding over the habeas proceeding?

For habeas, the "restrainor" court "has an interest in the subject matter in controversy". *Cf.* TEX. RS. CIV. P. 18a, 18b, 18b(1)(b); *McKenna v. State*, 221 S.W.3d 765 (Tex. 2007). *See also Bradley v. State of Texas ex rel. White*, 990 S.W.2d 245, 248, 249 (Tex. 1999) (judge can't be a witness in case over which he presides; "constitutionally intolerable appearance of partiality"); *Brown v. Lynaugh*, 843 F.2d 849, 851 (5th Cir. 1988); *In Re Murchison*, 349 U.S. 133 (1955) (judge can't be a witness in case over which he presides); TEX. R. CIV. EVID. 605; *Tesco American, Inc. v. Strong Industries*, 221 S.W.3d 550, 551-52 n.1, 553 n.10, 555 n.27 (***disqualification*** distinguished from recusal).

Remedies Requested

Given the foregoing, RJF requests relief as follows:

1. Grant this petition, issue the writ of certiorari, and take jurisdiction of this matter;
2. Confirm that the conviction does not render this pre-trial habeas issue moot;
3. Confirm that habeas is a separate, collateral, CIVIL proceeding, which should be given a CIVIL case number and handled by a CIVIL court;
4. Confirm that a "restrainor" court is ***disqualified*** from ruling in the related habeas case;
5. The opportunity to brief any additional issues the Court may identify;
6. The non-argument calendar;
7. Costs; and
8. Any and all other relief at law, in equity, or sui generis to which RJF may show himself justly entitled.

Respectfully submitted,

/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

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2008 Oct 15—Court of Criminal Appeals

[Watermark SEAL of THE STATE OF TEXAS]

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION,
AUSTIN, TEXAS 78711

RE: Writ No. WR-70,316-01
STYLE: FLORANCE, RICHARD JOHN, JR.
TRIAL CT NO: [blank in the original]
10/15/2008

This is to advise that the Court has denied without written order [1] the motion for leave to file the original application for writ of habeas corpus.

Louise Pearson, Clerk

RICHARD JOHN JR. FLORANCE
1908 VASSAR DRIVE
Richardson, TX 75081

[Pitney Bowes meter mark:
02 1A $ 00.27[0]
0004623940 OCT 1 6 2008
MAILED FROM ZIP CODE 78701]

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[1] [N.B. Surely they mean "opinion", not "order". "***Secret*** orders" violate Due Process. *Cf. Ballard v. comm'r*, 544 U.S. 40 (2005). *RJF*]

Rule 14.1(i)(ii)—Additional Orders

Transferor Court

2008 Apr 23—Post-mandate Notice to Appear

NOTICE TO APPEAR

Cause number 002-81238-06
The State of Texas Vs. FLORANCE,RICHARD JOHN JR

In The County Court at Law #2 of Collin County, Tx

You, the defendant, are hereby ordered to appear before The Honorable Jerry Lewis, County Court at Law #2, 1800 N. Graves, University Drive Courts , McKinney, Texas, 75069, on the 16 **day of May A.D. 2008, at 9:00 o'clock A.M.**, to answer criminal charges pending in that Court, to wit:

Refuse Execute Release Fraudulent Lien/Claim

and there remain until discharged by that Court.

Witness my official signature at McKinney, Texas this 23rd day of April A.D. 2008.

STACEY KEMP, County Clerk
Collin County, Texas
By: */s/ Amy Cundiff*
Deputy Clerk

Your failure to respond to this notice will result in a warrant for your arrest being issued.

CERTAIN DRIVING-WHILE-INTOXICATED CASES

A person charged with driving-while-intoxicated who also intends to plead Guilty or Nolo Contendere or who has been found guilty at trial may also bc required to take the Drivers-Risk-Inventory test. The test is given at the University Drive Courts Facility, 1800 North Graves, McKinney, Texas 75069 between 8:00 a.m., and 5:00 p.m.Monday [sic] through Friday. The $30.00 fee for taking the exam most be paid by cashier check or money-order at the time the test is taken. Please make checks or money orders payable to Collin County CSCD.

It is possible to take the test before ones court date, and doing so may save time

PAYING COURT-COSTS WHEN IT BECOMES REQUIRED IN ANY CASE

The following information about court-costs is provided to assist one seeking information for use when making a court-appearance.If [sic] a person has been found Guilty of a criminal offense after a trial, court-costs are due immediately. Court-costs are also immediately doe when any person appears and pleads Guilty or Nolo Contendere. Court-costs may be as high as $500.00. Persons intending to plead Guilty or Nolo Contendere may save considerable time by bringing funds with which to pay court-costs.

It is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on

account of the service of the person as a witness or to prevent or delay the persons service us a witness to a crime. [emphasis added]

[Spanish omitted]

Mailed to:
FLORANCE,RICHARD JOHN JR
1908 VASSAR DRIVE
RICHARDSON, TX 75081
ntc0v2.doc

2008 May 16—Transferor Court's Self-Recusal (i.e., the transfer order)

2-81238-06
Cause No.

THE STATE OF TEXAS	IN THE COUNTY COURT
(Seal of)	AT LAW NO. 2 OF
vs.	COLLIN COUNTY,
(COLLIN COUNTY)	TEXAS
RICHARD JOHN FLORANCE, JR.	HON. JERRY LEWIS, PRESIDING

ORDER OF VOLUNTARY RECUSSAL

On this date the defendant and an attorney for the state appeared in court for the first time' following a mandate from the Court of Appeals ordering that the case be returned to the trial court's

docket and tried as charged by the Information.

Previously, the defendant filed a motion for dismissal and other matters. Prior to the hearing the presiding judge read the defendant's brief on his motion. Upon doing so, the judge determined he cannot be a fair and impartial judge in this particular case based on the nature and wording of the law underlying the offense.

Therefore, on his own motion, the judge voluntarily recuses himself and refers the case to the Local Administrative Judge for County Courts at Law for re-assignment. To even docket load, this judge will accept transfer [of] any case on the receiving court's trial docket in return per that judge's choice.

A copy of this order was delivered to the defendant and the state's attorney in open court.

Date signed: May 16, 2008

/s/ Jerry Lewis
JERRY LEWIS

RECEIVED MAY 16, 2008:

/s/ Richard John Florance, Jr.
Defendant

/s/ Kelley Sullivan
Criminal Assistant District Attorney

Transferee Court

2008 May 16—Post-transfer Notice to Appear

NOTICE TO APPEAR

Cause number
002-81238-06

In The County Court
at Law #3

The State of Texas Vs.
FLORANCE,RICHARD JOHN JR

of Collin County, Tx

Effective May 1, 2001, all defendants are required to be present in court for all settings.

You, the defendant, are hereby ordered to appear before The Honorable John O. Barry,County [sic] Court at Law #3, 1800 N. Graves, University Drive Courts, McKinney, Texas, 75069, on the 22nd day of May A.D. 2008, at 8:30 o'clock A.M., to answer criminal charges pending in that Court, to wit:

Refuse Execute Release Fraudulent Lien/Claim

and there remain until discharged by that Court.

Witness my official signature at McKinney, Texas this 16 day of May A.D. 2008.

STACEY KEMP, County Clerk
Collin County, Texas
By: _____
Deputy Clerk

It is a criminal offense to fail to appear in Court upon receipt of this notice or **to influence or coerce a witness to elude legal process, or to harm or**

to threaten to harm a prospective witness, or to prevent or delay anyone[']s service as a witness. [emphasis added]

[Spanish omitted]

You have the right to be represented by an attorney or represent yourself.

You may not reschedule a case by phone.

Come to court dressed appropriately. Shorts, revealing clothing, hats, or sunglasses are not allowed.

Pagers and phones must be turned off. Recording equipment and cameras are not allowed in the courtroom.

Newspapers are not allowed in the courtroom. Dispose of all food items, including gum, prior to entering the courtroom.

Hearings will not be set unless a motion with fiat has been filed. Evidentiary pretrial motions may be carried until the time of trial.

Change of address must be filed by you in person at the County Clerk[']s Office or by notarized letter with a copy of your driver's license. You are responsible for knowing your court date. You will not receive any further written notice from the court or the clerk.

Collin County[']s Website: www.co.collin.tx.us

Mailed to:
FLORANCE,RICHARD JOHN JR
1908 VASSAR DRIVE
RICHARDSON, TX 75081
ntc3v2.doc

(Seal of COUNTY COURT AT LAW
COLLIN COUNTY, TEXAS)

THE STATE OF TEXAS
COUNTY OF COLLIN

I, Stacey Kemp, County Clerk, Court [sic] Collin County, Texas Do hereby certify that the foregoing instrument of writing is a full, true and correct copy of the instrument as filed for record in my office the *16* day of *MAY*, 20 *08*
No. *2-81238-06*

Witness my hand and official seal at my office in McKinney, Texas this *24* day of *JUNE*, 20 *08*

Stacey Kemp, Collin County Clerk
Collin County, Texas
By: */s/ (illegible)*, Deputy

2008 May 22—Scheduling Order, Jury Trial

CAUSE NO. *2 – 81238 – 06*

THE STATE OF TEXAS	)(	IN THE COUNTY COURT
VS.	)(	AT LAW NO. 3
Richard Florance	)(	COLLIN COUNTY, TEXAS

NOTICE TO APPEAR

THE ABOVE-REFERENCE CASE HAS BEEN SET FOR ONE OF THE FOLLOWING:

X JURY TRIAL

___ TRIAL BEFORE THE COURT

___ PLEA OF NOT TRUE

___ OTHER: _____

THE HEARING HAS BEEN SET FOR *July 16*, 200 *8* AT *8:30* A.M. IN THE COUNTY COURT AT LAW NO. 3.

Please be advised that you will receive no further notice of this setting.

COUNTY COURT AT LAW NO. 3

/s/ Donna Strub
Judge Presiding
by: court administrator

CERTIFICATE OF SERVICE

The undersigned has received a true and correct copy of the setting on the *22* day of *May*, 20*08*.

Interpreter required by ☐ DA – ☐ Defense

Language: _____

Defendant refuses to /s/*Jonathan Richardson*
Defendant — Assistant District Attorney

sign in open court. Defendant presented a copy of order /s/ *DS*
Defense Attorney — Court Administrator

White Copy – Court's File Canary – Dist. Atty File
Pink – Defendant. Atty Goldenrod – Defendant

(Seal of COUNTY COURT AT LAW
COLLIN COUNTY, TEXAS)

THE STATE OF TEXAS
COUNTY OF COLLIN

I, Stacey Kemp, County Clerk, Court [sic] Collin County, Texas Do hereby certify that the foregoing instrument of writing is a full, true and correct copy of the instrument as filed for record in my office the *22* day of *MAY*, 20*08*
No. *2-81238-06*

Witness my hand and official seal at my office in McKinney, Texas this *24* day of *JUNE*, 20 *08*

Stacey Kemp, Collin County Clerk
Collin County, Texas

By: */s/ (illegible)*, Deputy

2008 May 28—[Time and Sequence Marker] Emergency Notice of Appeal—Collateral Order Doctrine

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2008 Jun 5—Post-appeal Notice to Appear

NOTICE TO APPEAR

Cause number
002-81238-06

In The County Court
at Law #3

The State of Texas Vs.
FLORANCE,RICHARD JOHN JR

of Collin County, Tx

Effective May 1, 2001, all defendants are required to be present in court for all settings.

You, the defendant, are hereby ordered to appear before The Honorable John O. Barry,County [sic] Court at Law #3, 1800 N. Graves, University Drive Courts, McKinney, Texas, 75069, on the 26 day of June A.D. 2008, at 1:15 o'clock P.M., to answer criminal charges pending in that Court, to wit:

Refuse Execute Release Fraudulent Lien/Claim

and there remain until discharged by that Court.

Witness my official signature at McKinney, Texas this 5 day of June A.D. 2008.

STACEY KEMP, County Clerk
Collin County, Texas

By: _____
Deputy Clerk

It is a criminal offense to fail to appear in Court upon receipt of this notice or **to influence or coerce a witness to elude legal process, or to harm or to threaten to harm a prospective witness, or to prevent or delay anyone[']s service as a witness.** [emphasis added]

[Spanish omitted]

You have the right to be represented by an attorney or represent yourself.

You may not reschedule a case by phone.

Come to court dressed appropriately. Shorts, revealing clothing, hats, or sunglasses are not allowed.

Pagers and phones must be turned off. Recording equipment and cameras are not allowed in the courtroom.

Newspapers are not allowed in the courtroom. Dispose of all food items, including gum, prior to entering the courtroom.

Hearings will not be set unless a motion with fiat has been filed. Evidentiary pretrial motions may be carried until the time of trial.

Change of address must be filed by you in person at the County Clerk[']s Office or by notarized letter with a copy of your driver's license. You are responsible for knowing your court date. You will not receive any further written notice from the court or the clerk.

Collin County[']s Website: www.co.collin.tx.us

Mailed to:
FLORANCE,RICHARD JOHN JR
1908 VASSAR DRIVE

RICHARDSON, TX 75081
ntc3v2.doc

(Seal of COUNTY COURT AT LAW
COLLIN COUNTY, TEXAS)

THE STATE OF TEXAS
COUNTY OF COLLIN

I, Stacey Kemp, County Clerk, Court [sic] Collin County, Texas Do hereby certify that the foregoing instrument of writing is a full, true and correct copy of the instrument as filed for record in my office the *5* day of *JUNE*, 20 *08*
No. *2-81238-06*

Witness my hand and official seal at my office in McKinney, Texas this *24* day of *JUNE*, 20 *08*

Stacey Kemp, Collin County Clerk
Collin County, Texas
By: */s/ (illegible)* _____, Deputy

2008 Jun 9—[Time and Sequence Marker] RJF's habeas application filestamped

---

2008 Jun 10—[Time and Sequence Marker] RJF's Verified Non-emergency Notice of Appeal—Collateral Order Doctrine

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2008 Jun 10—[Time and Sequence Marker] RJF's Second Verified Non-emergency Notice of Appeal—Collateral Order Doctrine

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2008 Jun 24—BARRY's "Commandeering" "Order"

County Clerk directed to file ~~is~~ in Cause NO. 2-81238-06

John O. Barry
Judge
6.24.08 [2]

Cause No. _____

RICHARD JOHN FLORANCE, JR., Applicant,	§	In The
	§	
	§	COUNTY COURT AT LAW
	§	
	§	

[2] [N.B. This order is hand-written at the top of the first page of RJF's habeas application. *RJF*]

v.	§	
	§	NO. _____
	§	
COUNTY COURT AT LAW NO. 2 OF COLLIN COUNTY, and/or COUNTY COURT AT LAW NO. 3 OF COLLIN COUNTY,	§	OF COLLIN COUNTY
Custodian(s), Respondents.	§	COLLIN COUNTY, TEXAS

FLORANCE'S PRE-TRIAL APPLICATION FOR A WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Richard John Florance, Junior ("RJF"), who applies for a writ of habeas corpus as follows:

Assertion of Rights

RJF asserts all his unalienable rights, privileges and immunities at Natural Law, Common Law and Maritime Law, and all his respective commercial rights relevant to this state.

Notice of Non-consent to Non-judicial Decision-makers

RJF gives his Notice of his objection to, his lack of consent to, and his withholding of all consent regarding, substantive decision-making by anyone not a duly elected, or properly appointed, judicial officer operating under a valid and current oath of office.

The Collin County Clerk's Office criminally tampered with the Record.

FILED
COUNTY COURTS AT LAW
2008 JUN -9 AM 9: 43
STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: /s/ *JM* Deputy

2008 Jul 1—[Time and Sequence Marker] RJF's Verified Emergency Notice of Appeal—Collateral Order Doctrine

[This concerns habeas and ***disqualification***.]

2008 Jul 7—BARRY's order denying habeas

No. 2-81238-06 [3]

THE STATE OF TEXAS [4]	COUNTY COURT-AT-LAW NO. 3
VS.	
RICHARD JOHN FLORANCE, JR. [5]	COLLIN COUNTY, TEXAS

Order Denying Discharge
Order Denying Motion to Dismiss

In his application for writ of habeas corpus, the defendant has applied for discharge. His application is entitled "Florance's Pre-Trial Application for Writ of Habeas Corpus". And in his motion to dismiss, the defendant has moved to dismiss the information as amended. His motion is entitled "Defendant's Post-Mandate, Post-remand Verified Special Appearance and Motion to Dismiss."

For the hearing of both, the defendant and the Criminal District Attorney were present. After considering the requests, the evidence, and the argument of the parties, the Court is of the opinion that both should be denied.

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[3] [N.B. This is ***not*** a CIVIL matter case number but is rather the case number of the underlying criminal case. *RJF*]

[4] [N.B. STATE OF TEXAS is ***not*** the applicant in this habeas proceeding. *RJF*]

[5] [N.B. RJF is ***not*** the respondent in this habeas proceeding. *RJF*]

It is therefore ordered, adjudged, and decreed that the defendant's application for discharge made in his pre-trial application for writ of habeas corpus is denied, and that his request for dismissal of the information as amended is denied.

Signed this 7th day of July, 2008.

John O. Barry
John O. Barry
Judge Presiding

(Seal of COUNTY COURT AT LAW
COLLIN COUNTY, TEXAS)

THE STATE OF TEXAS
COUNTY OF COLLIN

I, Stacey Kemp, County Clerk, Court [sic] Collin County, Texas Do hereby certify that the foregoing instrument of writing is a full, true and correct copy of the instrument as filed for record in my office the *7* day of *July*, 20*08* [6]
No. *2-81238-06*

Witness my hand and official seal at my office in McKinney, Texas this *22* day of *July*, 20 *08*

Stacey Kemp, Collin County Clerk
Collin County, Texas
By: */s/ (illegible)*, Deputy

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[6] [N.B. Since BARRY had locked up the Record in his office from 7 July to trial, how can the clerk ***verify*** **WHEN** this order was "filed"??! *RJF*]

Rule 14.1(i)(iii)—Any Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—Any Judgment of different date

No judgment of different date.

Rule 14.1(i)(v)—Statutes and Rules

The Statutes Challenged

Texas Penal Code

Sec. 32.49. REFUSAL TO EXECUTE RELEASE OF FRAUDULENT LIEN OR CLAIM.

(a) A person commits an offense if, with intent to defraud or harm another, the person:

(1) owns, holds, or is the beneficiary of a purported lien or claim asserted against real or personal property or an interest in real or personal property that is fraudulent, as described by Section 51.901(c), Government Code; and

(2) not later than the 21st day after the date of receipt of actual or written notice sent by either certified or registered mail, return receipt requested,

to the person's last known address, or by telephonic document transfer to the recipient's current telecopier number, requesting the execution of a release of the fraudulent lien or claim, refuses to execute the release on the request of:

(A) the obligor or debtor; or

(B) any person who owns any interest in the real or personal property described in the document or instrument that is the basis for the lien or claim.

(b) A person who fails to execute a release of the purported lien or claim within the period prescribed by Subsection (a)(2) is presumed to have had the intent to harm or defraud another.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 4, eff. May 21, 1997.

Texas Government Code

SUBCHAPTER J. CERTAIN FRAUDULENT RECORDS OR DOCUMENTS

Sec. 51.901. FRAUDULENT DOCUMENT OR INSTRUMENT.

(a) If a clerk of the supreme court, clerk of the court of criminal appeals, clerk of a court of appeals, district clerk, county clerk, district and county clerk, or municipal clerk has a reasonable basis to believe in good faith that a document or instrument

previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent, the clerk shall:

(1) if the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person against whom the purported judgment, act, order, directive, or process is rendered; or

(2) if the document or instrument purports to create a lien or assert a claim on real or personal property or an interest in real or personal property, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person named in the document or instrument as the obligor or debtor and to any person named as owning any interest in the real or personal property described in the document or instrument.

(b) A clerk shall provide written notice under Subsection (a):

(1) not later than the *second business day after* the date that the document or instrument is offered or submitted for filing or for filing and recording; or

(2) if the document or instrument has been previously filed or recorded, not later than the *second business day after* the date that the clerk becomes aware that the document or instrument may be fraudulent.

(c) For purposes of this section, a document or instrument is presumed to be fraudulent if:

(1) the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:

(A) a purported court or a purported judicial entity not expressly created or established under the constitution or the laws of this state or of the United States; or

(B) a purported judicial officer of a purported court or purported judicial entity described by Paragraph (A); or

(2) the document or instrument purports to create a lien or assert ***a claim against real or personal property or an interest in real or personal property*** and:

(A) is *not* a document or instrument *provided for* by the constitution or laws of this state or of the United States;

(B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or

(C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or of the United States.

(d) If a county clerk believes in good faith that a document filed with the county clerk to create a lien is fraudulent, the clerk shall:

(1) request the assistance of the county or district attorney to determine whether the document is fraudulent before filing or recording the document;

(2) request that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, such as a contract or other document that contains the alleged debtor or obligor's signature; and

(3) forward any additional documentation received to the county or district attorney.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997. Amended by Acts 2005, 79th Leg., ch. 407, Sec. 1, eff. Sept. 1, 2005.
(all emphasis added)

Sec. 51.902. ACTION ON FRAUDULENT JUDGMENT LIEN.

(a) A person against whom a purported judgment was rendered who has reason to believe that a document previously filed or recorded or submitted for filing or for filing and recording is fraudulent may complete and file with the district clerk a motion, verified by affidavit by a completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, that contains, at a minimum, the information in the following suggested form:

MISC. DOCKET NO. _____

In Re: A Purported Judgment Lien Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Motion for Judicial Review of a Documentation Purporting to Create a Judgment Lien

Now Comes (name) and files this motion requesting a judicial determination of the status of a court, judicial entity, or judicial officer purporting to have taken an action that is the basis of a judgment lien filed in the office of said clerk, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the person against whom the purported judgment was rendered.

II.

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the county clerk received and filed or filed and recorded the documentation attached hereto and containing (number) pages. Said documentation purports to have been rendered on the basis of a judgment, act, order, directive, or process of a court, judicial entity, or judicial officer called therein "(name of purported court, judicial entity, or judicial officer)" against one (name of purported debtor).

III.

Movant alleges that the purported court, judicial entity, or judicial officer referred to in the attached documentation is one described in Section 51.901(c)(1), Government Code, as not legally created or established under the constitution or laws of this state or of the United States, and that the documentation should therefore not be accorded lien status.

IV.

Movant further attests that the assertions contained herein are true and correct.

PRAYER

Movant requests the court to review the attached documentation and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, must be as follows:

THE STATE OF TEXAS

AFFIDAVIT

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly

sworn, deposed as follows:

"My name is _____. I am over 21 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I further attest that the assertions contained in the accompanying motion are true and correct." Further affiant sayeth not.

_____

SUBSCRIBED and SWORN TO before me, this _____ day of _____, _____.

_____

NOTARY PUBLIC, State of Texas
Notary's printed name:

_____

My commission expires:

_____

(c) A motion filed under this section may be ruled on by a ***district*** judge having jurisdiction over real property matters in the county where the subject documentation was filed. **The court's finding may be made solely on a review of the documentation attached to the movant's motion and without hearing any testimonial evidence.** [7] **The court's review may be made ex parte without delay or notice of any kind.** [8] **The court's ruling on the motion, in the nature of a finding of fact and a conclusion of law, is unappealable if it is substantially similar to the form suggested in Subsection (g).**

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[7] [N.B. *Cf.* TEX. R. CIV. P. 166a; FED. R. CIV. P. 56. *RJF*]

[8] [N.B. Even summary judgment requires Notice. *RJF*]

(d) The district clerk may not collect a filing fee for filing a motion under this section.

(e) After reviewing the documentation attached to a motion under this section, the district judge shall enter an appropriate finding of fact and conclusion of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed.

(f) The county clerk may not collect a filing fee for filing a district judge's finding of fact and conclusion of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

MISC. DOCKET NO. _____

In Re: A Purported Judgment Lien Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Judicial Finding of Fact and Conclusion of Law Regarding a Documentation Purporting to Create a Judgment Lien

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion verified by affidavit of (name) and the documentation attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the

determination that a decision could be made solely on review of the documentation under the authority vested in the court under Subchapter J, Chapter 51, Government Code.

The court finds as follows (only an item checked and initialed is a valid court ruling):

_____ The documentation attached to the motion herein refers to a legally constituted court, judicial entity, or judicial officer created by or established under the constitution or laws of this state or of the United States. This judicial finding and conclusion of law does not constitute a finding as to any underlying claims of the parties.

_____ The documentation attached to the motion herein DOES NOT refer to a legally constituted court, judicial entity, or judicial officer created by or established under the constitution or laws of this state or of the United States. There is no valid judgment lien created by the documentation.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its finding of fact and conclusion of law to a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject document.

SIGNED ON THIS THE _____ DAY OF _____.

_____
DISTRICT JUDGE
_____ JUDICIAL DISTRICT
_____ COUNTY, TEXAS

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997.
(all emphasis added)

Sec. 51.903. ACTION ON FRAUDULENT LIEN ON PROPERTY.

(a) A person who is the purported debtor or obligor or who owns real or personal property or an interest in real or personal property and who has reason to believe that the document purporting to create a lien or a claim against the real or personal property or an interest in the real or personal property previously filed or submitted for filing and recording is fraudulent may complete and file with the ***district*** clerk a motion, verified by affidavit by a completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, that contains, at a minimum, the information in the following suggested form:

MISC. DOCKET NO. _____

In Re: A Purported Lien or Claim Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Motion for Judicial Review of Documentation or Instrument Purporting to Create a Lien or Claim

Now Comes (name) and files this motion requesting a judicial determination of the status of documentation or an instrument purporting to create an interest in real or personal property or a lien or claim on real or personal property or an interest in real or personal property filed in the office of the Clerk of (county name) County, Texas, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the purported obligor or debtor or person who owns the real or personal property or the interest in real or personal property described in the documentation or instrument.

II.

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the county clerk received and filed and recorded the documentation or instrument attached hereto and containing (number) pages. Said documentation or instrument purports to have

created a lien on real or personal property or an interest in real or personal property against one (name of purported debtor).

III.

Movant alleges that the documentation or instrument attached hereto is fraudulent, as defined by Section 51.901(c)(2), Government Code, and that the documentation or instrument should therefore not be accorded lien status.

IV.

Movant attests that assertions herein are true and correct.

V.

Movant does not request the court to make a finding as to any underlying claim of the parties involved and acknowledges that this motion does not seek to invalidate a legitimate lien. Movant further acknowledges that movant may be subject to sanctions, as provided by Chapter 10, Civil Practice and Remedies Code, if this motion is determined to be frivolous.

PRAYER

Movant requests the court to review the attached documentation or instrument and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, must be as follows:

THE STATE OF TEXAS

AFFIDAVIT

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____. I am over 21 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I further attest that the assertions contained in the accompanying motion are true and correct." Further affiant sayeth not.

_____

SUBSCRIBED and SWORN TO before me, this _____ day of _____, _____.

_____

NOTARY PUBLIC, State of Texas

Notary's printed name:

_____

My commission expires:

_____

(c) A motion under this section may be ruled on by a district judge having jurisdiction over real property matters in the county where the subject document was filed. **The court's finding may be made solely on a review of the documentation or**

instrument attached to the motion and without hearing any testimonial evidence. [9] **The court's review may be made ex parte without delay or notice of any kind.** [10] An appellate court shall expedite review of a court's finding under this section.

(d) The district clerk may not collect a filing fee for filing a motion under this section.

(e) After reviewing the documentation or instrument attached to a motion under this section, the district judge shall enter an appropriate finding of fact and conclusion of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed. A copy of the finding of fact and conclusion of law shall be sent, by first class mail, to the movant and to the person who filed the fraudulent lien or claim at the last known address of each person within seven days of the date that the finding of fact and conclusion of law is issued by the judge.

(f) The county clerk may not collect a fee for filing a district judge's finding of fact and conclusion of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

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[9] [N.B. *Cf.* TEX. R. CIV. P. 166a; FED. R. CIV. P. 56. *RJF*]

[10] [N.B. Even summary judgment requires Notice. *RJF*]

MISC. DOCKET NO. _____

In Re: A Purported Lien or Claim Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Judicial Finding of Fact and Conclusion of Law
Regarding a Documentation or Instrument
Purporting to Create a Lien or Claim

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion, verified by affidavit, of (name) and the documentation or instrument attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation or instrument under the authority vested in the court under Subchapter J, Chapter 51, Government Code.

The court finds as follows (only an item checked and initialed is a valid court ruling):

_____ The documentation or instrument attached to the motion herein *IS asserted against real or personal property or an interest in real or personal property* and:

(1) IS provided for by specific state or federal statutes or constitutional provisions;

(2) IS created by implied or express consent or agreement of the obligor, debtor, or the owner of the

real or personal property or an interest in the real or personal property, if required under the laws of this state, or by consent of an agent, fiduciary, or other representative of that person; or

(3) IS an equitable, constructive, or other lien imposed by a court of competent jurisdiction created or established under the constitution or laws of this state or of the United States.

_____ The documentation or instrument attached to the motion herein:

(1) IS NOT provided for by specific state or federal statutes or constitutional provisions;

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the law of this state or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the constitution or laws of this state or the United States; ***or***

(4) IS NOT asserted against real or personal property or an interest in real or personal property. [11] There is no valid lien or claim created by this documentation or instrument.

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[11] [N.B. So, what are we here for, then? *RJF*]

This court makes no finding as to any underlying claims [12] of the parties involved, and expressly limits its finding of fact and conclusion of law to the review of a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation or instrument was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject documentation or instrument.

SIGNED ON THIS THE _____ DAY OF _____.

_____
DISTRICT JUDGE
_____ JUDICIAL DISTRICT
_____ COUNTY, TEXAS

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997.

(all emphasis added)

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[12] [N.B. The ruling challenged in No. 07-171 ***does*** go ***directly*** to the merits of the lien/claim; here, without Notice, opportunity to be heard, etc. *RJF*]

Rule 14.1(i)(vi)—Additional Essential Materials

2006 Jun 23—A pretrial information sheet

CASE#/002-81238-06 CJ4B171

✳ *Republic of Texas* ✳

********** *NR*

NAME/FLORANCE RICHARD JOHN JR
****

ADDR/ 1908 VASSAR DRIVE RICHARDSON TX
SEX/M RAC/W DOB/ 8/19/58
HT/508 WT/155 HAIR/BRO EYES/BRO
DL#/TX [Number in original is omitted here]
SSN/
ORIGINAL CHARGE/ Refuse Execute Release
Fraudulent Lien/Claim
WARRANT FOR/ CAPIAS,
BOND/ 500.00
ISSUED BY/ Lewis ON 3/27/04

2699	*TCIC*
	LTR

FILED
COUNTY COURT AT LAW
JUN 2 3 2006
BRENDA TAYLOR CLERK
COLLIN COUNTY, TEXAS
BY _____ DEPUTY

2008 May 16—Florance's Post-Mandate, Post-Remand Verified Special Appearance and Motion to Dismiss (case style, filestamp)

Cause No. 002-81238-06

STATE OF TEXAS,	§	In The
	§	
Plaintiff,	§	COUNTY COURT AT
v.	§	LAW NO. 2
	§	OF COLLIN COUNTY
RICHARD JOHN	§	
FLORANCE, JR.,	§	
	§	COLLIN COUNTY,
Defendant.	§	TEXAS

DEFENDANT'S POST-MANDATE, POST-REMAND VERIFIED SPECIAL APPEARANCE AND MOTION TO DISMISS

FILED
COUNTY COURTS AT LAW
2008 MAY 16 AM 8: 36

STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: __/s/ *[initials ?]*__ Deputy

2008 Jun 9—Cover Letter, Florance's Petition for a Writ of Habeas Corpus

FILED
COUNTY COURTS AT LAW
2008 JUN 9 AM 9: 43

STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: *__/s/ [JM]__* Deputy

5 June 2008

RICHARD JOHN FLORANCE, JR.
1908 Vassar Drive
Richardson, TX, 75081

STACEY KEMP, Clerk Via FedEx
County Courts at Law of Collin County
1800 North Graves Street
McKinney, TX 75069

Re: STATE v. Florance, 002-81238-06-2008, 002-81238-2008
Habeas

Dear Ms. Kemp:

Enclosed are one original and two copies of the petition for a writ of habeas corpus. The original is for filing, and the two copies are for service.

Sincerely,

/s/ Richard John Florance Jr.
Richard John Florance, Jr.
I reserve all rights not
specifically waived

Encls.